



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 10

KENNETH I KOHN
KOHN & ASSOCIATES
30500 NORTHWESTERN HIGHWAY, SUITE 410
FARMINGTON HILLS, MI 48334

COPY MAILED

SEP 13 2002

OFFICE OF PETITIONS

In re Application of	:
Xiao Tong et al	:DECISION DISMISSING PETITION
Application No. 09/938,391	:PETITION UNDER 37 CFR 1.137(b)
Filed: August 24, 2001	:
Attorney Docket No. 3153.0034/PC10790A	:

This is a decision on the renewed petition under 37 CFR 1.137(b), filed by facsimile transmission on August 7, 2002, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1).

The petition filed on June 20, 2002 was dismissed in a decision mailed July 15, 2002 in

view of the submission of a defective declaration. More specifically, the decision stated:

The reply does not satisfy the requirements of 37 CFR 1.63. In this regard, the declaration submitted fails to identify the application by application number and filing date. Further, the page of the declaration executed by inventor Tong fails to indicate that additional inventors are being named in a supplemental sheet. Accordingly, a newly executed oath or declaration identifying each inventor and identifying the application by application number and filing date in compliance with the provisions of 37 CFR 1.63(a)(2) and 37 CFR 1.63(b)(1) is required.

It is further noted that the originally filed declaration further fails to identify the instant application by title of the invention.¹ Nevertheless, the declaration submitted with the instant renewed petition to revive is unacceptable for the additional reason that it has been altered after execution. Accordingly, a declaration in compliance with 37 CFR 1.63 and 1.64 must be submitted to revive the instant application.

In order to expedite revival of this application, petitioner may wish to consider submitting the items required by this decision on petition in a renewed petition under 37 CFR 1.137(b) by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

¹ It appears that the first page of the declaration was not submitted at the time of filing of the petition to revive on June 20, 2002.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy